

1 CURTIS LEE HENDERSON SR
2 H-43488
3 P.O. BOX 3481
4 CORCORAN CALIFORNIA 93212
5 PROPIA PERSONA

FILED

FEB 28 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 CURTIS LEE HENDERSON SR.,
10 PLAINTIFF,
11 V.
12 J. PETERSON ET AL
13 DEFENDANTS

NO. C 07-2838 SBA (PR)
MOTION FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT

15 TO THE HONORABLE SAUNDRA BROWN ARMSTRONG
16 JUDGE OF THE ABOVE ENTITLE COURT.

17 PLEASE TAKE NOTICE THAT THE PLAINTIFF RESPECTFULLY
18 MOVES A MOTION FOR LEAVE TO FILE A SECOND AMENDED
19 COMPLAINT.

20 THIS MOTION IS MADE IN GOOD FAITH. AND NOT BEING
21 PRESENTED FOR ANY IMPROPER PURPOSE SUCH AS HARASSMENT OR
22 TO CAUSE UNNECESSARY DELAY OR NEEDLESS INCREASE IN THE
23 COST OF LITIGATION. BUT THESE CLAIMS AND OTHER LEGAL
24 CONTENTION WITHIN THE SECOND AMENDED COMPLAINT ARE
25 WARRANTED BY EXISTING LAW MADRID V. TILTON, C-90-3094 TEH
26 COLEMAN V. WILSON 912 F. SUPP. 1282, AND HAVE EVIDENTIARY
27 SUPPORT AND WARRANTED ON THAT EVIDENCE FED.R.CIV.P. 11,
28 //

MOTION FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT
HENDERSON V. PETERSON ET AL
COT 2838 SBA (PR)

1 THE ADDITIONAL PARTIES HAVE RECEIVED NOTICE OF
 2 THE ACTION BY WAY OF ADMINISTRATIVE APPEALS. THOSE PARTIES
 3 WILL NOT BE PREJUDICED IN MAINTAINING A DEFENSE ON THE
 4 MERITS.

5 THE PLAINTIFF REQUEST THE COURT TO TAKE JUDICIAL
 6 NOTICE. THAT THE DEFENDANTS HAVE NOT BEEN SERVED AT THIS
 7 TIME FED. R. CIV. P. 15 (a) ALLOWS AMENDMENT AS A MATTER
 8 OF COURSE BECAUSE A RESPONSIVE PLEADING HAS NOT BEEN
 9 SERVED.

10 WHILE IT IS TRUE THIS IS THE PLAINTIFFS SECOND
 11 MOTION FOR LEAVE TO AMEND. REQUEST THAT THE COURT ~~NOT~~ NOTE
 12 ADDITIONAL CLAIMS AND DEFENDANTS IN THE SECOND AMENDED
 13 COMPLAINT AROSE OUT OF THE CONDUCT, TRANSACTION OR OCCUR-
 14 RENCE SET FORTH OR ATTEMPTED TO BE SET FORTH IN THE
 15 ORIGINAL PLEADING FED. R. CIV. P 15 (c) (2)

16 THE SECOND AMENDED COMPLAINT, MOST IMPORTANTLY
 17 ASSIST THE COURT BY TAKING THE COURT THROUGH, FROM START
 18 TO FINISH OF NONCONCLUSORY ALLEGATIONS ~~BY~~ SETTING FORTH
 19 CONCRETE DATES. AND TIMING OF EVENTS IS A TELLING PIECE
 20 OF EVIDENCE. IN PRATT V. ROWLAND, THE NINTH CIRCUIT RECOG-
 21 NIZED THAT "TIMING CAN PROPERLY BE CONSIDERED AS CIRCUM-
 22 STANTIAL EVIDENCE OF RETALIATORY INTENT." 65 F.3d 802, 808
 23 (9TH CIR. 1995).

24 WHILE THE PLEADINGS DO NOT CHANGE THE PARTY,
 25 BUT ADDS PARTIES TO THE COMPLAINT. THE PLAINTIFF ASK THE
 26 COURT TO TAKE JUDICIAL NOTICE OF FED. R. CIV. P. 17(a) TO AVOID
 27 FORFEITURES OF JUST CLAIMS. REVISED RULE 17(a) WOULD
 28 PROVIDED THAT NO ACTION SHALL BE DISMISSED ON THE,

1 GROUND THAT IT IS NOT PROSECUTED IN THE NAME OF THE REAL
2 PART~~E~~ IN INTEREST UNTIL A REASONABLE TIME HAS BEEN ALLOWED
3 FOR CORRECTION OF THE DEFECT IN THE MANNER THERE
4 STATED.

5 LASTLY THE PLAINTIFF DOES NOT EXPECT TO
6 FILE A THIRD AMENDED COMPLAINT UNLESS ORDERED TO
7 DO SO BY THE COURT, AS ALL CLAIMS ARE NOW BEFORE THE
8 COURT CONCERNING THE ISSUES IN THE ~~SECOND~~ AMENDED COMPLAINT.
9 AND ASK THE COURT TO LIBERALLY CONSTRUE THESE PRO SE
10 PLEADINGS.

11 I DECLARE UNDER PENALTY OF PERJURY UNDER
12 THE LAWS OF THE STATE OF CALIFORNIA THAT THE FORGOING IS
13 TRUE AND CORRECT.

14 2/22/08
15 DATED

CURTIS LEE HENDERSON SR

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27 "
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MOTION FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT
HENDERSON V. PETERSON ET AL
(07 2838 SBA (PR))

1 PROOF OF SERVICE

2 I CURTIS LEE HENDERSON SR DECLARE THAT I AM
3 THE PLAINTIFF IN THE ABOVE CASE MY ADDRESS IS P.O. BOX
4 3481 CORCORAN CALIF 93212 AND I SERVED THE DOCUMENT
5 LISTED HERE MOTION FOR LEAVE TO FILE A SECOND AMENDED
6 COMPLAINT ON THE FOLLOWING:

7
8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIF
11 1301 CLAY STREET 400 S. TOWER
12 OAKLAND CALIF 94612-5212

13
14 BY PLACING SAID DOCUMENT IN A SEALED ENVELOPE
15 WITH POSTAGE PREPAID.

16 I DECLARE UNDER PENALTY OF PERJURY UNDER THE
17 LAWS OF THE STATE OF CALIFORNIA THAT THE FORGOING IS TRUE
18 AND CORRECT.

19 2-25-08

20 DATED

21 CURTIS LEE HENDERSON SR

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MOTION FOR LEAVE TO FILE
4 ECLUN AMENDED COMPLAINT
HENDERSON V. PETERSON ET AL
CIV 2838 SBA (DR)

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